## PATENT COOPERATION TREATY



# **PCT**

# INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference P-442WO-0604	FOR FURTHER ACTIO	ON	See Form PCT/IPEA/416
International application No. PCT/JP2004/008248	International filing date (d 07 June 2004 (07		Priority date (day/month/year) 05 June 2003 (05.06.2003)
International Patent Classification (IPC) or A61K 45/00, 31/4439, G01N 33			/50
Applicant	NIPPON SHINYAK	U CO., LTD.	
This report is the international prel Authority under Article 35 and tran			s International Preliminary Examining 6.
2. This REPORT consists of a total of		cluding this cover	sheet.
3. This report is also accompanied by a. (sent to the applicant an	ANNEXES, comprising:  ad to the International Bureau	u) a total of	sheets, as follows:
	ntaining rectifications author		peen amended and are the basis of this report nority (see Rule 70.16 and Section 607 of the
	losure in the international ap		ty considers contain an amendment that goes, as indicated in item 4 of Box No. I and the
b. (sent to the Internati	onal Bureau only) a tota , containing indicated in the Supplement	g a sequence listi	ype and number of electronic carrier(s)) ng and/or tables related thereto, in computer to Sequence Listing (see Section 802 of the
4. This report contains indications re	lating to the following items:	;	
Box No. I Basis of the	report		
Box No. II Priority  Box No. III Non-establi:	shment of oninion with recov	ed to novelty inve	ntive step and industrial applicability
	ty of invention	ia to noverty, mve	mive step and medistral approximity
Box No. V Reasoned st		with regard to not	velty, inventive step or industrial applicability;
	uments cited		
<u> </u>	ects in the international appli	cation	
Box No. VIII Certain obs	ervations on the international	l application	
Date of submission of the demand	г	Date of completion	n of this report
04 January 2005 (04.	01.2005)	1	1 April 2005 (11.04.2005)
Name and mailing address of the IPEA/J	P A	Authorized officer	
Facsimile No.	1	Telephone No.	

Translation

# INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/JP2004/008248

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.  This report is based on translations from the original language into the following language which is language of a translation furnished for the purpose of:  international search (under Rules 12.3 and 23.1(0))  publication of the international application (under Rules 55.2 and/or 55.3)  2. With regard to the elements of the international application, this report is based on (replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report.  The international application as originally filed/furnished the description:  pages	Box N	o. I	Basis of the report
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* If item 4 applies, some or all of those sheets may be marked "superseded."		LJ *	ny table(s) related to sequence listing (specify):
	* If item		

International application No.

# INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

PCT/JP2004/008248

Box	No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
The app	questic	ons whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially have not been examined in respect of:
[	t	he entire international application.
	$\boxtimes$	claim No3
\	pecause	the said international application, or the said claim No relate to the following subject matter which does not require an international preliminary examination (specify):
		the description, claims or drawings (indicate particular elements below) or said claims Nosare so unclear that no meaningful opinion could be formed (specify):
		the claims, or said claims Nos are so inadequately supported by the description that no meaningful opinion could be formed.
	$\boxtimes$	no international search report has been established for said claim No3
		the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:  the written form
		the computer readable form has not been furnished  does not comply with the standard
		the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
		see Supplemental Box for further details.

International application No.

#### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

PCT/JP2004/008248

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement 1. Statement Novelty (N) Claims YES 1, 2, 4 Claims NO Inventive step (IS) Claims YES 1, 2, 4 Claims NO Industrial applicability (IA) Claims YES 1, 2, 4 Claims NO 2. Citations and explanations (Rule 70.7) Document 1: JP 2002-541253 A & WO 2000/61576 A1 & EP 1169317 A1 & US 6465493 B1 Document 2: WO 2002/22871 A2 & JP 2004-508835 A & EP 1347992 A2 & US 6630304 B1 Document 3: Kunio TAKAOKA, Tominaga SHIMIZU, "BMP ni yoru Hone Saisei to Kotsu Soshosho," Igaku no Ayumi, 2001, Vol. 198, p. 625-629 Document 4: SPINELLA-JAEGLE, S. et al., Opposite effects of bone morphogenetic protein-2 and transforming growth factor-81 on osteoblast differentiation, Bone, 2001, Vol. 29, No. 4,

p. 323-330
Document 5: Shingo MAEDA, Kenji IMAMURA, Kohei MIYAZONO,

"TGF-β/BMP Signal to Kotsuga Saibo Bunka," Experimental Medicine, 2002, Vol. 20,

No. 17 (Zokan), p. 101-106

Document 6: INMAN, Gareth J. et al., SB-431542 is a potent and specific inhibitor of transforming growth factor-β superfamily type I activin receptor-like kinase (ALK) receptors ALK4,

ALK5, and ALK7, Molecular Pharmacology, 2002, Vol. 62, No. 1, pages 65-74

None of the documents cited in the international search report describes or suggests the inventions of claims 1, 2, and 4, and therefore these inventions are novel and involve an inventive step. [1] Document 1 describes an invention of a drug for the treatment of osteoporosis having as its active ingredient 4-(4-benzo[1,3]dioxol-5-yl-5-pyridin-2-yl-1H-imidazol-2-yl) benzamide, which inhibits the signal transduction pathway of TGF-β. None of the documents describes or suggests the combined use of BMP with a compound that inhibits the signal transduction pathway of TGF-β such as 4-(4-benzo[1,3]dioxol-5-yl-5-pyridin-2-yl-1H-imidazol-2-yl) benzamide, etc., the fact that this compound enhances the osteogenesis promoting action of BMP, and the screening of agents that enhance the promotion of osteogenesis using TGF-β inhibitory action and BMP inhibitory action as a marker.

### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No. PCT/JP2004/008248

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

The invention of claim 1 encompasses agents that increase the promotion of osteogenesis having as their active ingredient all compounds that have the desirable property of "having a selective inhibitory effect on TGF-β." However, this examination finds that only a very small portion of the claimed compounds are fully disclosed in the sense of PCT Article 5 and supported by the Description in the sense of PCT Article 6.

In addition, in consideration of the level of technical knowledge at the time this application was filed, the term "compounds having a selective inhibitory effect on TGF-β" cannot specify the scope of compounds having such a property, and therefore the invention of claim 1 does not satisfy the requirement for clarity as defined in PCT Article 6.

International application No.

#### INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

PCT/JP2004/008248

#### Supplemental Box

In case the space in any of the preceding boxes is not sufficient. Continuation of Box V:

[2] Document 2 describes the invention of an agent for treating osteoporosis that contains BMP-2. Document 3, page 625, lower left column, states the following: "The promotion of healing of fractures and repair of wide-ranging bone loss using BMP is expected to become therapeutic means that will replace autologous bone transplantation. In addition, by expression of BMP and inhibition of signal transduction, it may be possible to apply the BMP to the treatment of osteoporosis by promoting bone formation throughout the body."

In addition, document 4 states that BMP-2 and TGF-β1 have opposite effects with respect to the differentiation and maturation of osteoblasts, that BMP-2 increases the expression of osteocalcin and ALP activity, which are osteoblast differentiation markers, but TGF-β1 does not have these effects, and that TGF-β1 inhibits the effects by BMP-2 and the mineralization of matrix. Document 4 also states that even when BMP-2 and TGF-β1 are used concurrently, the effects of increased osteocalcin expression and ALP activity by BMP-2 are inhibited by TGF-β1 regardless of whether they are administered in the order of BMT-2 followed by TGF-β1 or in the opposite order. Document 5, page 105, lower left column, lines 15 to 17 states the following: "It can be understood that BMP exercises positive control and TGF-β exercises negative control on intracartilaginous ossification."

Furthermore, document 6 states that SB-431542 (4-(4-benzo[1,3]dioxol-5-yl-5-pyridin-2-yl-1H-imidazol-2-yl) benzamide) inhibits the signal of TGF-β, but does not inhibit the signal of BMP.

However, documents 2-6 neither describe nor suggest the combined use of BMP with a compound that inhibits the signal transduction pathway of TGF-β such as 4-(4-benzo[1,3]dioxol-5-yl-5-pyridin-2-yl-1H-imidazol-2-yl) benzamide, etc., the fact that this compound enhances the osteogenesis promoting action of BMP, and the screening of agents that enhance the promotion of osteogenesis using TGF-β inhibitory action and BMP inhibitory action as a marker. Moreover, the present invention has the following beneficial effect: compounds that exhibit almost no osteogenesis promoting effect by themselves but selectively inhibit TGF-β such as 4-(4-benzo[1,3]dioxol-5-yl-5-pyridin-2-yl-1H-imidazol-2-yl) benzamide, etc., clearly enhance the osteogenesis promoting effects of BMP.

## 特 許 協 力 条 約

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特許性に関する国際予備報告(特許協力条約第二章)

(法第12条、法施行規則第56条) [PCT36条及びPCT規則70]

出願人又は代理人 の書類記号 P-442WO-0604	今後の手続きについては、様式PCT	T/IPEA/416を参照すること。
国際出願番号 PCT/JP2004/008248	国際出願日 (日.月.年) 07.06.2004	優先日 (日.月.年) 05.06.2003
国際特許分類 (IPC) Int. Cl' A61P 19/08, G01N 33		38/18, A61K 31/4439,
出願人(氏名又は名称)	日本新薬株式会社	
1. この報告書は、PCT35条に基づ 法施行規則第57条(PCT36条)		国際予備審査報告である。
2. この国際予備審査報告は、この表紙	を含めて全部で6 ペ	ージからなる。
3. この報告には次の附属物件も添付さ a		
	礎とされた及び/又はこの国際予備審3 PCT規則70.16及び実施細則第607	査機関が認めた訂正を含む明細書、請求の範 号参照)
第 I 欄 4. 及び補充欄に示 国際予備審査機関が認定し		の開示の範囲を超えた補正を含むものとこの
b 電子媒体は全部で	トンア、マンル・・・クログがあり可能な	(電子媒体の種類、数を示す)。 形式による配列表又は配列表に関連するテー
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4. この国際予備審査報告は、次の内容		
<ul><li>第 Ⅰ 概 国際予備審査報</li><li>第 Ⅰ 概 優先権</li></ul>		
		and the second second second second
□ 第IV欄 発明の単一性の	の欠如・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・	国際予備審査報告の不作成
□ 第IV欄 発明の単一性の	の欠如 (2) に規定する新規性、進歩性又は産業	国際予備審査報告の不作成 上の利用可能性についての見解、それを裏付
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□ 第IV概 発明の単一性(区) 第V欄 PCT35条(ロ) けるための文(E) 第VI概 ある種の引用: 第VI概 国際出願の不	の欠如 (2) に規定する新規性、進歩性又は産業 飲及び説明 文献 備 する意見	上の利用可能性についての見解、それを裏付
□ 第IV欄 発明の単一性(区) 第V欄 PCT35条(ロ) けるための文(E) 第VI欄 ある種の引用: 第VI欄 国際出願の不	の欠如 (2)に規定する新規性、進歩性又は産業 歓及び説明 文献 燗	上の利用可能性についての見解、それを裏付
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□ 第IV欄 発明の単一性(区) 第V欄 PCT35条けるための文(日) 第VI欄 ある種の引用(日) 第VI欄 国際出願の不住(区) 第VI欄 国際出願に対して、第VI欄 国際出願に対して、第VI欄 国際出願に対して、第VI欄 国際出版に対して、第VII 個 国際出版に対して、第VII 個 国際出版に対して、第VII 個 国際出版に対して、第VII 個 国際出版に対して、第VII 個 国際	の欠如 (2) に規定する新規性、進歩性又は産業 歓及び説明 文献 備 する意見  国際予備審査報  特許庁審査官(	上の利用可能性についての見解、それを裏付 告を作成した日 11.04.2005

第1柄 報告の基礎
1. この国際予備審査報告は、下記に示す場合を除くほか、国際出願の官語を基礎とした。
<ul> <li>□ この報告は、 語による翻訳文を基礎とした。</li> <li>それは、次の目的で提出された翻訳文の言語である。</li> <li>□ PCT規則12.3及び23.1(b)にいう国際調査</li> <li>□ PCT規則12.4にいう国際公開</li> <li>□ PCT規則55.2又は55.3にいう国際予備審査</li> </ul>
2. この報告は下配の出願ช類を基礎とした。 (法第6条(PCT14条)の規定に基づく命令に応答するために提出された差替え用紙は、この報告において「出願時」とし、この報告に添付していない。)
出願時の国際出願む類
明細書       ページ、出願時に提出されたもの         第       ページ*、 付けで国際予備審査機関が受理したもの         第       ページ*、 付けで国際予備審査機関が受理したもの
請求の範囲       項、 出願時に提出されたもの         第       項*、PCT19条の規定に基づき補正されたもの         第       何*、 PCT19条の規定に基づき補正されたもの         項*、 付けで国際予備審査機関が受理したもの         項*、 付けで国際予備審査機関が受理したもの
第       項*、 付けで国際予備審査機関が受理したもの         図面       第       ページ/図、出願時に提出されたもの         第       (ページ/図*、 付けで国際予備審査機関が受理したもの         第       (ページ/図*、 付けで国際予備審査機関が受理したもの
回 配列表又は関連するテーブル 配列表に関する補充欄を参照すること。
3. 補正により、下記の啓類が削除された。
□ 明細書       第       ページ         □ 請求の範囲       第       項         □ 図面       ページ/図         □ 配列表(具体的に記載すること)       □         □ 配列表に関連するテーブル(具体的に記載すること)       □
4. この報告は、補充欄に示したように、この報告に添付されかつ以下に示した補正が出願時における開示の範囲を超えてされたものと認められるので、その補正がされなかったものとして作成した。(PCT規則70.2(c))
□ 明細書 第 ページ 項 項 項 図面 第 ページ/図 配列表(具体的に記載すること) 配列表に関連するテーブル(具体的に記載すること)
* 4. に該当する場合、その用紙に "superseded" と記入されることがある。

第Ⅲ棚 新規性、進歩性又は産業上の利用可能性についての見解の不作成	
1. 次に関して、当該請求の範囲に記載されている発明の新規性、進歩性又は産業上の利用可能性に- 審査しない。	つき、次の理由により
国際出願全体	
× 請求の範囲 3	
理由:  この国際出願又は請求の範囲  次の事項を内容としている(具体的に記載すること)。	することを要しない
明細書、請求の範囲若しくは図面(次に示す部分)又は請求の範囲 記載が、不明確であるため、見解を示すことができない(具体的に記載すること)。	σ
全部の請求の範囲又は請求の範囲 裏付けを欠くため、見解を示すことができない。	5、明細書による十分な
×  請求の範囲   3   について、国際調査報告が作	<b>成されていない。</b>
□ ヌクレオチド又はアミノ酸の配列表が、実施細則の附属書C (塩基配列又はアミノ酸配列を含むのガイドライン) に定める基準を、次の点で満たしていない。	明細書等の作成のため
***	
コンピュータ読み取り可能な形式による配列表が 提出されていない。	
□ コンピュータ読み取り可能な形式によるヌクレオチド又はアミノ酸の配列表に関連するテープ/ Cの2に定める技術的な要件を、次の点で満たしていない。	レが、実施細則の附属書
□ 提出されていない。 □ 所定の技術的な要件を満たしていない。	
詳細については補充棚を参照すること。	

第V梱 新規性、進歩性又は産業」 それを裏付ける文献及び訂	この利用可能性についての法第12条(PCT35条(2))に定める見解、 説明	
1. 見解		
新規性 (N)	請求の範囲 <u>1,2,4</u> 請求の範囲	_ 有 _ 無
進歩性(IS)	: 請求の範囲 <u>1,2,4</u> 請求の範囲 <u></u>	_ 有 _ 無
産業上の利用可能性 (IA)	請求の範囲 <u>1,2,4</u> 請求の範囲	_ 有 _ 無
2. 文献及び説明(PCT規則7	0.7)	
& WO 2 & EP 1	02-541253 A 2000/61576 A1 169317 A1	
文献 2:WO 200	5465493 B1 02/22871 A2 2004-508835 A 347992 A2 5630304 B1	
文献3:高岡邦夫 涓	6 6 3 0 3 0 4	
文献4:SPINELLA-JA protein -2:	EGLE, S. et al., Opposite effects of bone morphogene and transforming growth factor- $eta$ 1 on osteoblast	etic
文献 5:前田真吾、 <i>፭</i> TGF-β/	BMPシグナルと骨芽細胞分化、 実験医学、2002、Vol. 2	20,
No.17 (増刊 文献 6 : INMAN, Gare inhibitor o activin rec	), p. $101-106$ th J. et al., SB-431542 is a potent and specific f transforming growth factor- $\beta$ superfamily type I eptor-like kinase (ALK) receptors ALK4, ALK5, and AL harmacology, 2002, Vol. 62, No. 1, p. 65-74	
も	4は国際調査報告に引用された上記いずれの文献にも、言いから新規性・進歩性を有する。 「GFーβシグナル伝達経路阻害活性を有する4ー(4ーベールー5ーイルー5ーピリジンー2ーイルー1 Hーイミダンベアミドを有効成分とする骨粗鬆症の治療剤の発明が記載され、シグ[1,3]ジオキソールー5ーイルー5ーピリジンーダン・ルー2ーイル)ベンズアミド等のTGFーβシグナルのといるをBMPと併用すること、並びに該化合物がBMFの場所を増強すること、及び、TGFーβ阻害作用及びBMI	ン グー され シ で
害作用を指標として情 示唆もされていない。	『形成促進増強剤をスクリーニングすることについては記録	載も

### 第四個 国際出願に対する意見

請求の範囲、明細鸖及び図面の明瞭性又は請求の範囲の明細鸖による十分な裏付についての意見を次に示す。

請求の範囲 1 は、「 $TGF-\beta$  選択的阻害作用を有する」という所望の特性を有するあらゆる化合物を有効成分として含有する骨形成促進増強剤を包含するものであるが、PCT第5条の意味において開示されているのは、クレームされた化合物の極一部に過ぎず、PCT第6条の意味での明細書の開示による裏付けを欠くものと認められる。

また、「 $TGF-\beta$ 選択的阻害作用を有する化合物」は、出願時の技術常識を勘案してもそのような性質を有する化合物の範囲を特定できないから、請求の範囲1は、PCT第6条における明確性の要件も欠いている。

#### 補充欄

いずれかの欄の大きさが足りない場合

### 第 V 棚の続き

[2] 文献2にはBMP-2を含有する骨粗鬆症治療剤の発明が記載されており、文献3の第625頁 左下欄には、「BMPを用いた骨折の治癒促進、広範囲骨欠損の修復などは、自家骨移植に変わる治療手段として期待されている。また、BMPの発現やシグナル伝達制御により、全身の骨形成を促進することによって骨粗鬆症の治療に応用できる可能性もある。」と記載されている。

また、文献 4には BMP-2と  $TGF-\beta$  1は 骨芽細胞の分化と成熟に対して逆の作用を有しており、 BMP-2は 骨芽細胞の分化マーカーである A L Pの活性及びosteocalcinの発現を増大させるが、  $TGF-\beta$  1 は該作用を示さず、さらに、 BMP-2による該作用及びマトリックスの鉱質形成作用を阻害することが記載されており、 BMP-2と  $TGF-\beta$  1 を同時に作用させても、 BMP-2、  $TGF-\beta$  1 の順、あるいは逆の順序で作用させても、  $TGF-\beta$  1 により、 DMP-2 の、 DMP-2 の DMP-2 の DMP-2 の活性及びosteocalcinの発現の増大作用が抑制されることも記載されている。 文献 DMP-2 の制御を行っていることがうかがえる」と記載されている。

そして、文献6の全文には、SB-431542(4-(4-ベンゾ[1, 3]ジオキソールー5ーイルー5ーピリジンー2ーイルー1Hーイミダゾールー2ーイル)ベンズアミド)がTGF- $\beta$ のシグナルを阻害するが、BMPのシグナルは阻害しないことが記載されている。

しかしながら、文献 2-6 には、4-(4-ベンゾ[1, 3] ジオキソールー5ーイルー5ーピリジンー2ーイルー1 Hーイミダゾールー2ーイル)ベンズアミド等のTGFーβシグナル伝達経路阻害活性を有する化合物をBMPと併用すること、並びに該化合物がBMPの有する骨形成促進作用を増強すること、及び、TGFーβ阻害作用及びBMP阻害作用を指標として骨形成促進増強剤をスクリーニングすることについては記載も示唆もされておらず、一方本願は、単独での骨形成促進作用がほとんど見られない、4-(4-ベンゾ[1, 3] ジオキソールー5ーイルー5ーピリジンー2ーイルー1 Hーイミダゾールー2ーイル)ベンズアミド等のTGFーβ選択的阻害作用を有する化合物が、BMPによる骨形成促進作用を著しく増強するという有利な効果を有する。